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SUBJECT: INTERNET PIRACY IN SPAIN: SUSPENSION OF
PRIVATE-SECTOR NEGOTIATIONS

REF: A. MADRID 410

[1B](#). MADRID 397

[1C](#). MADRID 224 AND PREVIOUS

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SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

SUMMARY

[11](#). (SBU) On April 17, negotiations between the association of Internet Service Providers (ISPs) ("Redtel") and the Coalition of Creators and Content Industries ("Coalition") were suspended. The parties had been meeting regularly for almost a year in an attempt to negotiate an agreement on combating internet piracy. According to Coalition sources, Redtel advised that it could not accept the Coalition's latest proposal and did not see any point in negotiating further. The government, which had been pressing the parties to reach an agreement that it hoped would serve as a basis for legislative and regulatory reform, asked each side to send its proposal in the hopes of identifying a solution that would bridge the differences between the two sides. However, the proposal submitted by Redtel was four months old and did not recognize more recently negotiated points of agreement. The government is analyzing the proposals and must decide whether to try to broker an agreement or to develop and implement its own initiative independent of service and content providers' positions. End Summary.

MOVING TOWARDS A GRADUATED RESPONSE SYSTEM

[12](#). (SBU) Per ref C, the GOS has long believed that any "graduated response" regime or other package of measures to dissuade internet users from unauthorized file-sharing and punish repeat offenders will be politically controversial, and has pinned its hopes on the private-sector negotiations. Senior government officials had pressed the presidents of Redtel and the Coalition to submit their agreement by December 31, and then by March 4. After the parties missed both deadlines, the government reportedly expressed the intention to form a Working Group to develop its own solutions. This was apparently an attempt to pressure the parties to conclude a voluntary agreement rather than have the government impose its will.

[13](#). (SBU) As might be expected, the parties have approached the negotiations from vastly different perspectives. Redtel, whose members represent four major telecommunications

companies - Telefonica, Vodafone, ONO, and Orange - is mostly interested in the "business model" aspects of the agreement, in which content providers would agree to make some content available online, which the ISPs could market. This poses a problem for the U.S.-based Motion Picture Association of America (MPAA - perhaps the most influential Coalition member), which argues that it can agree to general statements about the desirability of online legal content but cannot, for U.S. anti-trust reasons, enter into business negotiations with Redtel on behalf of its members, which are individually considering online distribution deals.

THE DEAL THAT WAS ON THE TABLE

¶4. (SBU) With respect to dissuasive measures, before the negotiations were suspended, the parties had reportedly agreed to a watered-down version of the graduated response regime currently under consideration in the French legislature. The parties would agree to ask the government to create a national commission to receive complaints about illicit websites and downloading activity and send warning letters. However, the government believes it could probably send only about 1000 such letters per month. Websites that post IPR-infringing content would receive only one warning before being blocked; Coalition president Aldo Olcese believes that some 70 sites account for 80 percent of all infringing content and that their takedown would go a long way towards solving the problem. With respect to individual users who download infringing content, Redtel is on board with sending them two warning letters but insists that any agreement explicitly rule out suspension of internet access as a sanction for repeat offenders. Representatives of the film and music industries accept that account suspension should be a rarely used last resort in extreme cases but have not agreed to eliminate it as an option. Redtel also

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believes that fines should be the only sanction for offenders who ignore the first two warning letters. Its negotiators argue that such technical measures as posting reminder warnings on individual internet accounts or reducing bandwidth are too difficult and costly to implement or too interventionist. Content providers insist, however, that the agreement include the possibility of some technical measures, even if the specific details are left to be worked out later.

¶5. (SBU) According to Olcese, Redtel had agreed to the legal and regulatory aspects of the agreement. To reduce the burden on the government, these would be minimal: The parties would ask the government to amend the 2002 Law on Information Society Services and Electronic Commerce (LSSI) to create the government body to implement the graduated response regime, and to some provisions regulating that law. They would also propose amendments to the law governing civil procedure to remove some of the obstacles that impede rights-holders from pursuing civil remedies against internet pirates. There are conflicting accounts as to whether the parties would also call on the government to amend the Prosecutor General's 2002 Circular that currently makes it almost impossible to obtain criminal convictions in digital piracy cases. However, according to Coalition sources, the proposal Redtel sent to the government includes none of the legislative or regulatory provisions, focusing almost entirely on business model issues and minimizing the legal and technical elements.

GOVERNMENT PONDERS NEXT STEPS

¶6. (SBU) According to Salvador Soriano, Deputy Director for Information Society Services in the Ministry of Industry, Tourism, and Trade, the government is disappointed to learn that negotiations have failed. It is currently studying each side's proposal to see if there are enough areas of agreement to provide a basis for government action. Carlos Guervos, acting Deputy Director for Intellectual Property at the Ministry of Culture, characterized the breakdown as a small hurdle. He said the Culture Ministry is determined that

there will be new regulations to address internet piracy; it would be easier if they were based on a private-sector agreement, but if that is not possible, the government will develop its own solution.

¶7. (SBU) Leading members of the Coalition hope that the government, eager to avoid embarrassment given how much it has riding on a successful negotiation, will persuade Redtel to return to the table with a more forthcoming attitude. The status quo - a legal regime that makes it almost impossible for content providers to enforce their rights and a prevailing public belief that P2P file-sharing is or should be legal - is unsustainable for content providers but advantageous for Internet Service Providers. Redtel members and their parent companies state that they will obey any law or regulation that the government enacts but have been reluctant to undertake any voluntary measures for fear of alienating their client base. Pedro Farre, government affairs director for the General Society of Authors and Publishers (SGAE), explains Redtel's withdrawal from negotiations as "a piece of theater." The recent campaign by the Internet Users' Association ("Internautas") to drive out the new Minister of Culture (ref B), he explained, enables Redtel members to argue that anyone who agrees to restrict internet use in any way will be the object of overwhelming popular wrath. (Comment: The alleged fear of the Internautas seems exaggerated to us, as they have not proven able to mobilize significant numbers for any event.)

COMMENT

¶8. (SBU) Even if this impasse is overcome, there may be more bumps in the road ahead. In March, the parties were reportedly close to a deal, with only MPAA holding out, preferring no deal at all to what it considered an inadequate offer. Other stakeholders, believing that an agreement without the participation of MPAA would lack credibility, prevailed upon the Association to continue to negotiate. There continue to be disagreements within both the Coalition - especially between the film and music industry groups and copyright management societies like SGAE - and Redtel, between Telefonica and smaller ISPs. This time it is Redtel that prefers no deal to one that it believes will bring major headaches.

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¶9. (SBU) This impasse offers the government an opportunity to exercise leadership, but it remains unclear whether the government will work actively to help the parties overcome their differences, or propose a solution of its own, or take no action. One school of thought is that the government would like to defer this issue until after European Parliament elections in June. Coalition members are hopeful that anti-piracy legislation will pass soon in France, possibly influencing the calculations of Redtel and the government. Post will use our upcoming meeting to inform the GOS of its Special 301 status to emphasize the importance we attach to GOS action. End Comment.

CHACON